

INCOME TAX ACT 1967

INCOME TAX (PROPERTY DEVELOPMENT) REGULATIONS 2007

In exercise of the powers conferred by subsection 36(1) of the Income Tax Act 1967 [Act 53], the Director General makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as **the Income Tax (Property Development) Regulations 2007**
- (2) These Regulations are deemed to have effect from the year of assessment 2006 and subsequent years of assessment.

Application

2. These Regulations shall apply to all property developers carrying out the property development business.

Interpretation

3. For the purpose of these Regulations -

“development units” means units of residential, commercial or industrial building and vacant lots developed for sale;

“progress payments” means amounts billed for work performed on properties sold in respect of property development activities, whether or not they have been paid;

“project” means a cluster of development units erected within a designated geographical area forming a cost-accumulating centre and includes vacant lots developed for sale, and where a cluster of development units is erected in more than one phase, the development units erected in each phase shall be treated as a separate cluster of development units erected within a designated, geographical area;

“property developer” means a company, an individual, a partnership, a co-operative society, a body of persons, who or which engaged in or carries on or undertakes or causes to be undertaken a property development;

“property development” means the activity of acquiring land for the purposes of developing, constructing or causing to be constructed thereon and selling completed residential, commercial or industrial buildings, whether as a whole or by parcels therein, including homesteads, hobby farms, orchards or for other similar purposes.

Separate source of income

4. In ascertaining the gross income of a property developer from its property development business, each property development project shall be treated as a separate and distinct source of income of the developer in respect of the business.

Gross income

5. Subject to regulation 12, the gross income of a property developer for the basis period for a year of assessment in respect of each property developer for that period as ascertained under regulation 6.

Estimate gross profit

6. (1) For the purposes of regulation 5, the estimated gross profit of a property developer for the basis period for a year of assessment in respect of a property development project shall be An amount ascertained in accordance with the following formula:

$$\frac{A}{B} \times C$$

Where A is the sum of progress payments in respect of the project received and receivable in that basis period (the figures shall reflect the actual position prevailing at the balance sheet date) ;

B is the total estimated sale value of the project;

C is the total estimated gross profit from the project;

Provided that in computing the estimated gross profit in accordance with the above formula the developer shall ensure that it uses fair and reasonable estimates as required for the purpose of such computation.

- (2) The Director General may allow a property developer to apply a formula, other than a formula provided for in subregulation (1), for the purpose of ascertaining the estimated gross profit from the property development project of the developer for the basis period for a year of assessment;

Provided that the formula adopted shall be in accordance with the accounting standard or practice applicable during the basis period that relates to the project and in computing the estimated gross profit in accordance with the formula, the developer shall ensure that it uses fair and reasonable estimates as required for the purpose of such computation.

- (2) A property developer may in a basis period for a year of assessment revise the estimate gross profit in respect of its property development project for that basis period or the immediately following basis periods based on the following circumstances:

- (a) there is a variation in the development cost of the project;

- (b) there is a variation in this selling price of the development unit of the project; or

- (c) any commercial reasons as may be approved by the Director General.

- (3) Where the estimated gross profit or revised estimated gross profit of a property developer has been ascertained in accordance with the formula provided for in subregulation (1) or (2), the developer shall apply the formula throughout the period of its property development project and whereby the result shall reflect a fair spread of the estimated gross profit for the applicable periods.

Estimated loss

7. (1) Subject to subregulation (2) and regulation 12, where for a basis period for a year of assessment a property developer anticipates that for that basis period there will be an estimated loss from one or more of its property development projects, the estimated loss or aggregate of estimated loss from those projects for that basis period shall be allowed to be set off against the aggregate of the estimated gross profit from the other property development projects of the property developer for that basis period;

Provided that where the estimated loss or aggregate estimated loss of the property developer for that basis period exceeds the aggregate estimated gross profit from those other projects, the excess shall be disregarded for the purposes of ascertaining the chargeable income of the developer for that basis period.

- (2) The estimated loss for the basis period for a year of assessment referred to in subregulation (1) shall be ascertained in accordance with the formulas provided for in regulation 6:

Provided that in applying the formula the total estimated gross profit provided for in that formula shall be substituted with the total estimated loss from the property development project.

Adjusted income

8. (1) The adjusted income of a property developer from a property development business for the basis period for a year of assessment shall be an amount ascertained by deducting from the aggregate amount of gross income of the developer from each of its sources from that business for that period all expenses (other than any development expenditure that has been taken into account in ascertaining the estimated gross profit or loss of the property developer under regulation 6 or 7) incurred during that period by that developer in respect of that business.

- (2) In subregulation (1) –

(a) “expenses” means all expenses which are deductible under the Act including any initial expenses in respect of a property development project of the developer which are incurred after the commencement of the property development business of the developer; and

(b) “development expenditure” includes –

(i) interest paid or payable on loans taken by the property developer to finance the purchase of land or development works of its property development project; and

(ii) the proportion of the common infrastructure cost that relates to the project of which proportion shall be ascertained consistently in accordance with –

- (A) the area (acreage) of the project method;
- (B) the relative sales value method; or
- (C) any method which is acceptable by the Director General.

Date of commencement of property development business

9. A property development business shall commence on a date when some significant activities or essential preliminaries to the normal operations of property development are undertaken or on any other date as the Director General considers appropriate and reasonable

Date of completion of a property development project

10. A property development project shall be deemed to have been completed on a date the temporary certificate or the certificate of fitness for occupation (or any) other certification which has a similar effect. Which ever is earlier, in respect of the project is issued by an authorized person or body.

Deductibility of expenses incurred in respect of warranty or defects liability

11. Where in a basis period for a yr of assessment a property development project is deemed to have been completed, any expenses in respect of a warranty or defects liability of that project which are incurred in that basis period or any following basis periods -

- (a) shall be allowed as a deduction against the gross income of a property developer from that project for that basis period or that following basis period, as the case may be; and
- (b) where, by reason of an absence or insufficiency of gross income from that project for that basis period or that following basis period, effect cannot be given or cannot be given in full to any expenses falling to be deducted under paragraph (a), the expenses which have not been so deducted shall be also as a deduction against –
 - (i) the aggregate amount of gross income from the other property development projects of the property developer for that basis period or that following basis period, as the case may be; or
 - (ii) the gross income from that project or the period preceding the basis period in which the expenses are incurred and where, by reason of an absence or insufficiency of gross income from that project for that preceding basis period, effect cannot be given or cannot be given in full to any expenses falling to be deducted pursuant to this subparagraph, the expenses which have not been so deducted shall be allowed as a deduction against the gross income from that project of the developer for the next preceding basis period and so on for the duration of the project:

Provided that the property developer shall make an irrevocable election to claim such expenses in the basis period in which the expenses are incurred or in the immediately following basis period.

Actual gross profit or loss

12. Where in a basis period for a year of assessment a property development project is deemed to have been completed, the property developer shall ascertain the actual gross profit or loss from the project and in the event that -

- (a) the actual gross profit from the project is more than the total estimated gross profit which has been taken as gross income of the developer pursuant to regulation 5, the difference shall be treated as part of the gross income of the developer for that basis period; or

- (b) the actual gross profit of the project is less than the total estimate gross profit which has been taken as gross income of the developer pursuant to regulation 5 or there is an actual loss, the actual gross profit or loss may be apportioned in accordance with the formula provided for in regulation 6 for the purpose of ascertaining the profit or loss of the project for that basis period and preceding basis periods and any assessment that has been made or will be made under the Act for those periods may be revised or determined in accordance with the ascertainment:

Provided that in applying the formula the developer shall use the actual sales, cost, profit or loss, as the case may be, from that project.

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